

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1953.02
COMPLAINT INVESTIGATOR:	Connie Rahe
DATE OF COMPLAINT:	September 16, 2002
DATE OF REPORT:	November 13, 2002
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	January 31, 2003

COMPLAINT ISSUES:

Whether the Switzerland County School Corporation and the Madison Area Educational Special Services Unit violated:

511 IAC 7-27-4(c)(3) by failing to utilize a case conference committee (CCC) to develop strategies, including positive behavioral interventions and supports, to address the student's behavior, specifically, behavior while riding the bus.

511 IAC 7-27-6(a)(3) by failing to provide in the student's individualized education program (IEP) a statement of the special education and related services and supplementary aids and services, including modifications and accommodations to be provided to the student in order to be involved in and advance appropriately toward attaining annual educational goals.

511 IAC 7-28-1(a) and (o)(3)(D) by unilaterally determining the student was not eligible for a related service, specifically, for failing to consider in a CCC if issues about the student's behavior require special considerations for providing special transportation to and from school.

511 IAC 7-29-1(d) and (j) by suspending the student for more than ten (10) consecutive days, as a result of a pattern of suspensions from the bus.

511 IAC 7-29-5 by failing to convene a CCC meeting to develop a plan for assessing the student's behavior when the student was assigned a removal that constituted a change in placement, or by failing to review an existing behavior plan to determine if modifications are needed, specifically when being suspended from the bus.

511 IAC 7-29-6 for failing to conduct a review of the relationship between the student's disability and the behavior subject to disciplinary action to determine if the behavior is a manifestation of the student's disability when the student was unilaterally removed from his current placement for more than ten (10) instructional days, including the CCC failing to consider all relevant information before making such a determination.

511 IAC 7-27-10(a) by failing to utilize the CCC when the student was enjoined by a court order from attending school, to determine the student's placement to be the student's home or an alternate setting, and to state in the CCC report: (1) the reason the student is not attending school, (2) other options tried or considered, and (3) the reasons the other options were rejected.

An extension of time until October 30, 2002, was granted on October 11, 2002, to allow the investigator sufficient time to review the information related to the issues involved. Another extension of time until November 13, 2002, was granted October 30, 2002.

FINDINGS OF FACT:

1. The Student is 11 years old, attends the 4th grade and at the time this complaint was filed, the Student was eligible for special education and related services under the category of learning disability, with other health impaired and an emotional disability. (During the course of this investigation, at a CCC meeting held September 23, 2002, the Student's eligibility was changed to emotional disability).
2. The Student has a history of exhibiting inappropriate behaviors, primarily on the afternoon bus. The Student was suspended for a number of days for these behaviors over the course of the 2000-2001 and 2001-2002 school years. The Student also has been suspended from school during the 2002-2003 school year for similar behaviors on the bus.
3. The CCC Report/IEP dated December 11, 2000, indicates that the Student's inappropriate behaviors on the bus are increasing. The February 11, 2001, CCC Report/IEP indicates similar concerns, although it also noted that the Student's behaviors at school were generally appropriate. Neither of these CCC Reports/IEPs nor the current CC Report/IEP dated May 9, 2002, include any discussion or strategies of how to address the Student's continuing inappropriate behaviors on the bus. None of the agreed-upon IEPs for the 2000-2001 or the 2001-2002 school years includes transportation as a related service.
4. In a letter to the local director in January 2001, the Complainant related that the Student had missed a significant number of days of school due to being suspended from the bus and asked that special transportation be considered as a related service in light of the Student's problems. No CCC was convened to discuss the need for alternative arrangements or special transportation. The Student's behavior on the bus continued to result in suspensions from school during the current school year. The agreed-upon IEP, dated May 9, 2002, does not include transportation as a related service.
5. The Student was suspended from school on August 30 through September 5, 2002, for a total of 4 consecutive days. The Student was suspended a total of seven cumulative days between August 28 and September 11, 2002. On or about September 11, 2002, the school filed a Complaint for Injunctive Relief and a Motion for a Temporary Restraining Order with the local court. On September 11, the court issued an order styled as "Temporary Restraining Order", requiring among other things, that the Student attend homebound instruction at the school's central office, pending a hearing on the school's complaint on September 25, 2002. The Student was provided homebound instruction between September 11 and September 25, 2002.
6. On September 6, 2002, the School made a decision to expel the Student. Ten business and instructional days from September 6 elapsed on September 20, 2002.
7. The CCC convened on September 23, 2002, conducted a manifestation determination, and determined that the Student's behavior was a manifestation of the Student's disability. The CCC did not develop a plan to assess the Student's functional behavior, nor did the Student have an existing behavioral intervention plan for the CCC to review or revise. As a result of the CCC's manifestation determination, the CCC revised the Student's IEP, included special transportation as a related service, and the Student returned to school on September 26, 2002.

8. The Student's IEP, dated May 9, 2002, and in effect at the time this complaint was filed, contains a statement of the special education and related services, including modifications and accommodations to be provided in order for the Student to advance appropriately toward attaining the Student's educational goals. The parent signed the May 9, 2002, IEP indicating her agreement and consent.

Conclusions:

1. 511 IAC 7-27-4(c)(3) requires the CCC to consider strategies to address a student's behavior that impedes his or her learning. Findings of Fact #2 through #4 indicate the Student has a lengthy history of problem behaviors on the bus that resulted in the Student being suspended on numerous occasions. Despite this history and the Complainant's request for consideration of special transportation, the CCC did not identify any strategies to address the Student's behaviors that were occurring on the bus and resulting in disciplinary action. Therefore, a violation of 511 IAC 7-27-4(c)(3) is found.
2. Finding Of Fact #8 reflects that the Student's current IEP includes a statement of the special education and related services and supplementary aids and services, including modifications and accommodations to be provided to the Student in order to be involved in and advance appropriately toward attaining the identified educational goals. Therefore, no violation of 511 IAC 7-27-6(a)(3) is found.
3. 511 IAC 7-28-1(a) requires the CCC to determine if a student requires related services in order to benefit from special education. 511 IAC 7-28-1(o) identifies transportation as a related service and includes such things as special bus routes, special vehicles or equipment, an aide on the bus, or separate (individual) transportation. Findings of Fact #2 through #4 indicate that the agreed-upon IEPs for the 2000-2001 and 2001-2002 school years did not include special transportation nor was it required at the beginning of the 2002-2003 school year. Finding of Fact #7 reflects that the Student's current IEP, developed on September 23, 2002, includes special transportation as a related service. Therefore, no violation of 511 IAC 7-28-1(a) or 511 IAC 7-28-1(o) is found.
4. Finding of Fact #5 demonstrates that the Student was not suspended for more than ten consecutive days. Therefore, no violation of 511 IAC 7-29-1 is found. The Division makes no determination as to whether the periods of suspension during the previous two school years constitutes a pattern that effectively results in a change of placement. Pursuant to 511 IAC 7-29-1(k), such determination is reserved to an independent hearing officer.
5. 511 IAC 7-29-5 requires the school to convene a CCC within ten business days of a student's eleventh cumulative day of suspension or a decision to expel a student, in order to develop a plan to assess the student's functional behavior or review and, if necessary, revise the student's existing behavioral intervention plan. Finding of Fact #5 reflects that the Student was suspended less than ten cumulative instructional days prior to the court order requiring homebound instruction. Findings of Fact #6 and #7 reflect that the School made a decision to expel the Student on September 6, 2002, and that the CCC should have convened no later than September 20, 2002, to develop a plan to assess the Student's functional behavior or review an existing behavior intervention plan. The CCC convened on September 23, 2002, but did not develop a plan to assess functional behavior. Therefore, a violation of 511 IAC 7-29-5 occurred.
6. 511 IAC 7-29-6 requires the school to convene a CCC within ten instructional days of the date the decision is made to expel a student. Findings of Fact #6 and #7 indicate that such decision was made on September 6 and that ten instructional days from that date elapsed on September 20, 2002, without a CCC meeting being convened to conduct a manifestation determination. The CCC did not convene

until September 23, 2002, at which time it conducted a manifestation determination. Therefore, a violation of 511 IAC 7-29-6 is found.

7. 511 IAC 7-29-4 permits the school to seek injunctive relief to remove a student with a disability from school or to change a student's current educational placement. Although 511 IAC 7-27-4 gives the CCC the authority to determine the student's placement, and 511 IAC 7-27-10 allows that determination to be homebound instruction, the school maintains the ability to seek relief from the court. Finding of Fact #7 indicates the School sought injunctive relief from the court and, as a result, the court ordered the Student's placement changed to homebound instruction. Homebound instruction was provided during the period of the court order. Therefore, no violation of 511 IAC 7-27-10 is found.

The Department of Education, Division of Exceptional Learners requires the following corrective actions based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Switzerland County School Corporation and the Madison Area Educational Special Services Unit shall:

1. Convene a CCC to determine procedures for conducting a functional behavior assessment and developing a behavioral intervention plan for the Student. The CCC Report/IEP must document the CCC's consideration and must clearly describe how and when the FBA/BIP will be developed. A copy of the revised CCC Report/IEP shall be sent to the Division no later than December 13, 2002.
2. Send a written memorandum to all building administrators and appropriate staff that:
 - a. 511 IAC 7-29-5 requires the school to convene a CCC within ten business days of a student's eleventh cumulative day of suspension or a decision to expel a student in order to develop a plan to assess the student's functional behavior or review, and, if necessary, revise the student's existing behavioral intervention plan; and
 - b. 511 IAC 7-29-6 requires the school to convene a CCC to determine whether the student's behavior is a manifestation of the student's disability within ten instructional days of the date the decision is made to expel a student.

A copy of the memorandum and an assurance statement that the memorandum was sent to building administrators shall be submitted to the Division no later than December 13, 2002.